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Paper No. 4

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OFFICE OF PETITIONS

In re Application of :
Jesser :
Application No. 09/925,228 : DECISION REFUSING STATUS
Filed: August 8, 2001 : UNDER 37 CFR 1.47(b)
Attorney Docket No. EMS-02-016U :
Title: RFID TAG ASSEMBLY AND SYSTEM:

This is in response to the papers submitted with the instant application titled "STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING INVENTOR (37 CFR 1.47)." These papers are being construed as a petition under 37 CFR 1.47(b).

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed August 8, 2001 without an executed oath or declaration and naming Edward A. Jesser as the sole inventor.

On September 17, 2001, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, and a surcharge for its late filing.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing that such action is required to preserve the rights of the parties or to prevent irreparable damages.

Petitioner lacks items (1) and (2) set forth above.

As to item (1), the petition lacks supporting evidence that the nonsigning inventor cannot be reached, was ever presented with a copy of the application papers (specification, claims and drawings), or, having been presented with the application papers,

refuses to sign the oath or declaration. See, MPEP § 409.03(d).

The statement of facts of Mark Nicholson indicates that the inventor was presented with a copy of the application papers and thereafter verbally refused to execute the declaration. The statement of facts does not, however, detail the manner in which the application papers were presented to the inventor. If the application papers were presented via mail, proof to this effect in the form of a copy of the cover letter accompanying the application papers is required. If the application papers were presented to the inventor in person, a declaration to this effect along with details of the presentation by the person who presented the application papers to the inventor is necessary.

Petitioner is required to establish that the inventor received a copy of the application papers (specification, claims, and drawings) prior to the verbal refusal alleged by Mark Nicholson in the statement of facts accompanying the application papers.

Petitioner is reminded that before refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature.

Details of the alleged refusal, time, place, etc., must accompany any request for reconsideration of this decision.

As to item (2), applicant is required to submit the \$65.00 surcharge for late filing of an acceptable oath or declaration. The declaration accompanying the application papers is not acceptable because it has not been executed by the named inventor nor has applicant established entitlement to status under Rule 47. The declaration is also defective because it does not include a signature block for the person signing on behalf of the Rule 47 applicant. While the applicant signed on a separate document, this document is neither attached to nor referenced in the declaration.

Additionally, the declaration must be signed by an officer of the assignee corporation (president, vice president, secretary, or treasurer) on behalf of and as agent for the non-signing inventor. The officer must identify his or her title in the declaration. If the declaration is not signed by an officer of the corporation, proof of authority to sign by the person signing on behalf of the corporation must be submitted. See, MPEP 409.03(d).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By FAX: (703) 308-6916
 Attn.: Office of Petitions


By hand: Crystal Plaza Four, Suite 3C23

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Telephone inquiries related to this decision may be directed to
Petitions Attorney Alesia M. Brown at (703) 305-0310.


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